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March 29, 2021

Via ECF

The Honorable Edward G. Smith
United States District Court Judge
The Holmes Building, 4th Floor
101 Larry Holmes Drive
Easton, PA 18042

**RE: United States v. Joan Abreu-Feliz
Criminal Number 15-211-1**

Dear Judge Smith:

We write to notify the Court that, upon information and belief, defendant Joan Abreu-Feliz has received the first dose of the two-dose Pfizer-BioNTech COVID-19 vaccine. The defense intends to address this point through Mr. Abreu's testimony at tomorrow's hearing.

It is the defense's position that, notwithstanding Mr. Abreu's receipt of the first dose of the vaccine, compassionate release remains appropriate in his case. Numerous courts have concluded that receipt of one or both vaccine doses does not preclude compassionate release for medically vulnerable inmates like Mr. Abreu. *E.g., United States v. Hernandez Sandoval*, No. 14-5105, 2021 WL 673566 (W.D. Wash. Feb. 22, 2021) (granting compassionate release to medically vulnerable inmate who had recovered from COVID-19 and received first dose of Moderna vaccine, and finding that he had "established that he remains vulnerable to severe illness from COVID-19"); *see also United States v. Bradshaw*, No. 96-10032, ECF No. 804 (D. Mass. Mar. 10, 2021) (granting compassionate release to inmate with COPD who had received both doses of the Moderna vaccine); *United States v. Manglona*, No. 14-5393, 2021 WL 808386 (W.D. Wash. Mar. 3, 2021) (reducing fully-vaccinated defendant's sentence to time served in light of his medical vulnerabilities, and noting that "[r]isk appears to remain, but it is reduced to an unknown degree. . . . vaccination during the pendency of the Motion for Compassionate Release . . . should not, and does not, in some way trump the Court's consideration of the motion"); *United States v. Murakami*, No. 17-10346, ECF No. 81 (D. Mass. Feb. 26, 2021) (granting compassionate release to inmate

with hypertension and other risk factors who had received one dose of the Moderna vaccine); cf. *United States v. Parish*, No. 07-578, ECF No. 158 (D.S.C. Mar. 17, 2021) (granting BOP-supported compassionate release request filed by defendant who presented extraordinary and compelling reasons for release, even though he had received first vaccine dose).

The outcomes in these cases are appropriate, given the lack of scientific consensus surrounding the protection against COVID-19 conferred by partial and full vaccination. “[P]eople can still be vulnerable to infection after being vaccinated, particularly in the two weeks after receiving the second dose.” Wang, *et al.*, *Two lawmakers Test Positive For Coronavirus, One After Receiving Both Doses of Vaccine*, Wash. Post (Jan. 30, 2021). The CDC warns that the body does not “build protection (immunity) against the virus that causes COVID-19” until “two weeks after you are **fully** vaccinated.” CDC, *Key Things to Know About COVID-19 Vaccines*, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html> (last updated Mar. 13, 2021) (emphasis added). Experts advise that people like Mr. Abreu who have received one dose of a two-dose vaccine should not let their guard down with regard to precautions against the coronavirus. See Zaria Gorvett, *How effective is a single vaccine does against Covid-19?*, BBC (Jan. 14, 2021) (explaining that for the Pfizer vaccine, “one dose is still significantly less protective than two”). Data collected by Pfizer suggest that one dose of the vaccine is only 52% effective (and does not reach that level of efficacy until twelve days after it is administered), compared with 95% efficacy two weeks after the second dose. *Id.* And of course, reaching this peak level of efficacy presumes that a person has timely access to a second dose. Given the challenges that the BOP has encountered in accessing doses of the vaccine and administering them to the inmates who need them most, there is no guarantee that Mr. Abreu will be able to access his second dose at the necessary time.

Moreover, even assuming that Mr. Abreu receives a timely second dose of the vaccine and avoids contracting COVID during the two weeks thereafter, there is still no guarantee that he will be protected. Both Pfizer and Moderna have warned of the implications posed by newly-emergent variants of the coronavirus, acknowledging that these variants present a new set of moving targets; as “the coronavirus assumes contagious new forms around the world, [the] two drug makers reported . . . that their vaccines, while still effective, offer less protection against one variant . . .” Denise Grady, *As Virus Grows Stealthier, Vaccine Makers Reconsider Battle Plans*, N.Y. Times (Jan. 25, 2021). The CDC warns that “[w]e are still learning how effective the vaccines are against new variants of the virus that causes COVID-19. Early data shows the vaccines may work against some variants **but could be less effective against others.**” CDC, *Key Things to Know About COVID-19 Vaccines*, *supra* (emphasis added). According to the agency, scientists still do not know how variants “may affect existing therapies, vaccines, and tests,” and that they are working to understand “whether the variants . . . [c]hange the effectiveness of COVID-19 vaccines.” CDC, *About Variants of the Virus that Causes COVID-19*, <https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant.html> (last updated Feb. 12, 2021); see also Richard Harris, *A Rocky Road on the Way to Herd Immunity for COVID-19*, NPR (Feb. 3, 2021) (“New variants of the virus . . . could create a new wave of infections, even in people who have been vaccinated or previously exposed. . . . [I]f the virus successfully evades vaccines, it could put herd immunity out of reach.”)

Mr. Abreu is medically vulnerable, and while his receipt of one dose of the vaccine is a positive and welcome development, it does not adequately protect him. Mr. Abreu could still

easily contract COVID-19—and suffer life-threatening consequences—in the four to five weeks before his body develops full protection, and that is assuming he receives a timely second dose. Even then, there is still a substantial risk that he could be vulnerable to rapidly emerging variants of the virus. The sentencing factors favor relief in this case, and accordingly, the defense submits that a sentence reduction remains warranted.

Respectfully submitted,

/s/ James J. McHugh, Jr.

James J. McHugh, Jr.

Assistant Federal Defender

JJM/akc

cc: David J. Ignall, Assistant United States Attorney
Patrick J. Murray, Assistant United States Attorney